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THE STANDARD OF CARE REQUIRED OF SAVINGS BANK DIRECTORS

The directors of a savings bank occupy a fiduciary relation toward their depositors.[1] Two views are held, however, as to the technical conception of this office. One is that a trust is implied in fact from the acts of the parties in assuming their respective positions. The other view holds that the director in taking this office has thrust upon him by law, as if by specific stipulation, responsibilities as exacting as those of an express trustee. Whether one agrees with the majority opinion in the case of *Lippett v. Ashley*[2] in sustaining the former conception, or that of dissenting Judge Wheeler, supported by the decision in *Greenfield Savings Bank v. Abercrombie*,[3] it is undeniable that in either case certain fundamental duties are involved in the

[1] *Dickson v. Baker,* 77 N. W. 820; 75 Minn. 168.

[2] *Lippett v. Ashley,* 94 Atl. (Conn.) 995.

[3] *Greenfield Savings Bank v. Abercrombie,* 211 Mass. 252.

office. In caring for and investing funds of the depositors he is bound to exercise at least that degree of diligence and good faith which should govern the conduct of agents generally;[4] he may be sued by depositor or assignee for misappropriation of funds,[5] and will be held personally liable for wilfully coöperating with other directors in declaring dividends where there are no surplus profits.[6]

As to the question of negligence and a director's liability therefor, the judges in the principal case did not agree. The lower court held that a failure of the directors to require a trial balance, by which the embezzlement might readily have been discovered, did not constitute negligence. The majority of the Supreme Court of Errors reversed this decision, holding that due performance of the duty of reasonable care involved at least a compliance with the statutes of the State, the by-laws of the corporation, and the usages of the business. Accordingly, it decided that the omission of an ordinary precaution, such as this trial balance, is *prima facie* evidence of a want of reasonable care. *Williams v. McKay*[7] goes even further in holding the directors liable for money secretly withdrawn by others and covered by false entries, in spite of their having examined the books.

The dissenting opinion holds that bank directors acting *bona fide* need use only ordinary care and are liable to stockholders only for gross neglect. Such is the explicit rule of *Jones v. Johnson.*[8] Though this distinction, like all involving degrees of negligence, is unsatisfactory, it furnishes a real point of difference, as may be seen in the decisions which tend to follow the latter view. The case of *Wallace v. Lincoln Savings Bank*[9] asserts that this ordinary diligence required of bank directors is that exercised by prudent men about their own affairs. In fact, the English case of *Turquand v. Marshall*[10] authorizes the holding that directors, however indiscreet, are not personally liable for their official acts so long as not fraudulent.

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[4] *Greenfield Savings Bank v. Simons,* 133 Mass. 415.

[5] *Rice v. Howard,* 136 Cal. 432; 69 P. 77.

[6] *Van Dyck v. McQuade,* 57 How. Prac. 62; 45 N. Y. Super. Ct. 620; *N. H. Trust Co. v. Doherty,* 75 Conn. 555.

[7] *Williams v. McKay,* 46 N. J. E. 25; 18 Atl. 824.

[8] *Jones v. Johnson,* 86 Ky. 530; *Brinkerhof v. Bostwick,* 88 N. Y. 52.

[9] *Wallace v. Lincoln Savings Bank,* 89 Tenn. 630.

[10] *Turquand v. Marshall,* L. R. 4 Ch. 386. *Overend and G. Co. v. Gibb,* L. R. 5 H. L. 494.

The rule that the standard of care required of bank directors is that which a reasonably prudent man would exercise under similar circumstances has much to recommend it. First, it is the rule in other cases involving negligence. Secondly, it gives the jury a proper reminder of the relation of circumstances to the degree of prudence required. Finally, any other rule would necessarily be misleading. For instance, "that care exercised by a reasonably prudent man in the conduct of his own business" would imply to a jury that they should judge the liability of bank directors by a standard which is arbitrary and inflexible. It seems to take no account of the self-evident truth that different kinds of business vary in the degree of care required to constitute reasonable prudence on the part of those conducting them.

On the other hand this very arbitrary standard has a distinct advantage in that it gives the jury a definite starting point. To say that the standard of care required of a bank director is that of a reasonably prudent bank director leads us nowhere. It begs the whole question at issue. But a start from the degree of care exercised by a reasonably prudent man in the conduct of his own business is a start from a comparatively settled point and takes at least a step toward defining his duty. Note that this does not require him to take the same concrete precautions as a bank manager that he would, *e. g.*, in his private coal business. But it does clearly require him to have the interests of his directorship as much at heart as if it were his own concern, and thus exercise the same degree of care along bankers' lines that he does as an individual in his own affairs.

C. B.
S. B.

DELIVERY OF A CHECK AS A GIFT FOLLOWED BY THE DEATH OF DONOR BEFORE PRESENTMENT AT THE BANK

Decedent, intending to make a gift, drew his check for twenty thousand dollars to the order of his daughter and delivered it to her. She delivered it to her bank, which collected it, after her father's death, from the trust company on which it was drawn, and paid the proceeds to her. The court held that by delivery of the check the daughter became the testator's agent to withdraw the amount called for by the check and that her authority was revoked by his death and consequently she must restore